D.B. CIVIL SPECIAL APPEAL(W)NO.1140/2006

M/s. Choudhary Industries
Vs.
Bank of Baroda & Ors.

DATE OF ORDER :: 27-11-2007

HON'BLE THE ACTING CHIEF JUSTICE SHRI RAJESH BALIA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr. Satish Pachori for the appellant.

Having heard learned counsel for the appellant, we find that this appeal is an abuse of the process of the Court. In a suit filed by the bank against his debtor, the debtor raised an issue that the insurance company, who is an indemnifier for damages caused on account of fire and the Rajasthan Financial Corporation, the another creditor of the defendant, who in exercise of its powers under Section 29 of the State Financial Corporation Act has taken possession of the debtor's industry, be impleaded as a necessary party to the suit.

Apparently, the insurance company is an indemnifier and the Rajasthan Financial Corporation is another creditor and neither is necessary or proper party to the suit filed by the bank for recovery of its debt due from its debtor. They are total stranger. Apparently, this was an attempt to stall the trial by putting the wholly unnecessary issue on trial. Not only that thereafter when this issue was decided against the appellant, it has followed the same by way of writ petition and having failed there he has preferred this appeal in an attempt to cause delay in process of the trial.

We are informed that unfortunately the appellant has failed in this attempt and suit has already been decreed.

In these circumstances, not only that there is no merit in the appeal but the appeal has itself become infructuous and is hereby dismissed.

Since in our opinion this plea was raised in abuse of process of the Court, the appellant must pay cost which we quantify to Rs.2000/- to be deposited with the District Legal Services Authority.

[MOHAMMAD RAFIQ],J. **[RAJESH BALIA],ACTG.CJ.**

Skant/-